

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

STERLING SAVINGS BANK,  
  
Plaintiff(s),  
  
v.  
  
THE VESSEL IMAGINE, et al.  
  
Defendant(s).

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No. C-13-02499 DMR

**REQUEST FOR REASSIGNMENT;  
REPORT AND RECOMMENDATION  
RE (1) ISSUANCE OF WARRANT FOR  
ARREST OF VESSEL AND (2) ORDER  
FOR APPOINTMENT OF SUBSTITUTE  
COUNSEL**

Before the court are motions by Plaintiff Sterling Savings Bank ("Plaintiff") requesting issuance of a warrant for the arrest of a vessel [Docket No. 3], and appointment of substitute custodian [Docket No. 4]. The parties have not yet filed a declination or consent to the jurisdiction of a magistrate judge pursuant to 28 U.S.C. § 636(c). Therefore, the court requests that this case be reassigned to a District Judge, and issues this Report and Recommendation, with a recommendation that the motion for the arrest warrant and the request for appointment of substitute custodian be granted.

**I. BACKGROUND**

Defendants Lai and Wai P. Cheung (the "Cheungs") are owners of a houseboat called Imagine (the "Vessel") docked in Contra Costa County. Complaint [Docket No. 1] at ¶¶ 3-4. In October 2011, the Cheungs executed and delivered to Plaintiff a Promissory Note in the amount of \$555,257.00. *Id.* at ¶ 6. The Promissory Note is secured by a Consumer Security Agreement in

1 favor of Plaintiff, which gives Plaintiff a security interest in the Vessel. *Id.* at ¶ 8. Also in October  
 2 2011, the Cheungs executed a First Preferred Mortgage pursuant to 46 U.S.C. § 31301 *et seq.* in  
 3 favor of Plaintiff. The Cheungs allegedly have defaulted under the terms of the Promissory Note,  
 4 Consumer Security Agreement, and First Preferred Mortgage by, among other things, failing and  
 5 refusing to pay the full amount of the monthly principal and interest installments due and owing on  
 6 the Promissory Note since April 2012. *Id.* at ¶ 14. On June 4, 2013, Plaintiff filed this Complaint,  
 7 which asserts two causes of action: foreclosure *in rem* pursuant to 46 U.S.C. § 31325(b)(1) against  
 8 the Vessel, and default *in personam* pursuant to 46 U.S.C. § 31325(b)(2)(A) against the Cheungs.  
 9 As of the date of the Complaint, Plaintiff alleges it is owed \$613,044.88. *Id.* at ¶ 16.

## 10 II. REQUEST FOR ISSUANCE OF ARREST WARRANT

11 Plaintiff requests that this court issue an order for arrest of the Vessel. Docket No. 3 at 3.

12 If a party requests the issuance of a warrant for the arrest of a vessel, the court “must review  
 13 the complaint and any supporting papers. If the conditions for an *in rem* action appear to exist, the  
 14 court must issue an order directing the clerk to issue a warrant for the arrest of the vessel.” Fed. R.  
 15 Civ. P. Supp C(3)(a)(i). “An action *in rem* may be brought: (a) to enforce any maritime lien; (b)  
 16 whenever a statute of the United States provides for a maritime action *in rem* or a proceeding  
 17 analogous thereto.” Fed. R. Civ. P. Supp. C(1); *see also* 46 U.S.C.A. § 31325(b)(1) (authorizing the  
 18 mortgagee of a preferred mortgage, on the mortgagor’s default, to “enforce the preferred mortgage  
 19 lien in a civil action *in rem* for a documented vessel”). “In an action *in rem* the complaint must: (a)  
 20 be verified; (b) describe with reasonable particularity the property that is the subject of the action;  
 21 and state the property is within the district or will be within the district while the action is pending.”  
 22 Fed. R. Civ. P. Supp. C(2)(c).

23 The conditions for issuance of a warrant pursuant to Supplemental Rule C of the Federal  
 24 Rules of Civil Procedure appear to exist. The Complaint is verified. It alleges a cause of action *in*  
 25 *rem* to enforce a maritime lien. It states that “Plaintiff is informed and believes and thereon alleges  
 26 that Defendant Imagine, Hull ID 1YD70139A910, at 2010 Destination 70' Yacht, Official Number  
 27 1222594 . . . is a custom houseboat located at Cruiser Haven Marina in Discovery Bay, California.  
 28

1 The defendant vessel, Imagine, is now or during the pendency of process hereunder will be within  
2 this district and within the jurisdiction of this Honorable Court.” Docket No. 1 at ¶ 3.

3 Accordingly, the court recommends that the assigned District Judge instruct the Clerk to  
4 issue a warrant for the arrest of the vessel Imagine, and to deliver said warrant to the United States  
5 Marshal of this district for execution pursuant to Supplemental Rule C of the Federal Rules of Civil  
6 Procedure.

### 7 **III. REQUEST FOR APPOINTMENT OF SUBSTITUTE CUSTODIAN**

8 Plaintiff requests that Nielsen Beaumont Marine, Inc. be appointed as substitute custodian  
9 for the Vessel. Admiralty and Maritime Local Rule 9-1(a) provides that “[w]hen a vessel . . . is  
10 brought into the marshal’s custody by arrest or attachment, the marshal shall arrange for adequate  
11 safekeeping, which may include the placing of keepers on or near the vessel. A substitute custodian  
12 in place of the marshal may be appointed by order of the court.” Plaintiff requests the appointment  
13 of a substitute custodian because it alleges that the U.S. Marshal does not have the resources to  
14 retain custody of the vehicle. Docket No. 4 at ¶ 3. Nielsen Beaumont would provide security,  
15 monitoring, and routine safekeeping services for \$70 per day. *Id.* at ¶ 4. Nielsen Beaumont is  
16 located in San Diego and Long Beach, California, but it asserts that it can safely keep the Vessel  
17 where it is currently docked during the pendency of this lawsuit. *Id.* at 5 ¶¶ 1, 3.

18 The court recommends that the District Judge grant Plaintiff’s request for the appointment of  
19 substitute custodian. However, the court recommends that the District Judge prohibit Nielsen  
20 Beaumont from moving the Vessel from this district during the pendency of this lawsuit. *See* Fed.  
21 R. Civ. P. Supp. C(2)(c) (requiring the complaint in an action *in rem* to state that “the property is  
22 within the district or will be within the district while the action is pending”); Docket No. 4 at ¶ 4  
23 (“Nielsen Beaumont has also agreed to provide additional services as needed, possibly including . . .  
24 moving the boat to a different location.”).

### 25 **IV. CONCLUSION**

26 For the reasons stated above, the court recommends that Plaintiff’s request for the issuance of  
27 a warrant for the arrest of the Vessel and Plaintiff’s request for appointment of substitute custodian  
28 be GRANTED.

1 The Clerk is directed to reassign this case to a District Judge. Any party may file objections  
2 to this report and recommendation with the District Judge within 14 days after being served with a  
3 copy. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(a); N.D. Cal. Civ. L.R. 72-2.

4 IT IS SO ORDERED.

5  
6 Dated: June 12, 2013



DONNA M. RYU  
United States Magistrate Judge